Maramount Corp. *and* Plastic, Metal, Novelty and Allied Workers Union, Local 132–98, ILGWU, AFL–CIO

B.J. Paper Products, Inc. *and* International Ladies' Garment Workers' Union, AFL–CIO, Petitioner

Durlacher Co. *and* International Ladies' Garment Workers' Union, AFL–CIO, Petitioner

Liberty House Trading Corporation *and* International Ladies' Garment Workers' Union, AFL–CIO, Petitioner3

A.G.F. Sports, Ltd. *and* International Ladies' Garment Workers' Union, AFL–CIO, Petitioner

Gel Spice Company, Inc. *and* International Ladies' Garment Workers' Union, AFL–CIO, Petitioner

Lynch Novelty, Inc. *and* Embroidery, Belt and Allied Workers' Union, Local 66–40 ILGWU, AFL–CIO, Petitioner

Nova Clutch, Inc. *and* Local 810, International Brotherhood of Teamsters, AFL–CIO, Petitioner

Marlin Steel Products Co. *and* Plastic, Metal, Novelty and Allied Workers Union, Local 132–98, International Ladies' Garment Workers' Union, AFL–CIO, Petitioner

Three Sisters Apparel Corp. *and* International Ladies' Garment Workers' Union, AFL–CIO, Petitioner

Bedford Cutting Mills *and* International Ladies' Garment Workers' Union, AFL–CIO, Petitioner

Nova Clutch, Inc. *and* Local 810, International Brotherhood of Teamsters, AFL–CIO, Petitioner

New York Metropolitan Employer Association *and* International Ladies' Garment Workers' Union, AFL–CIO, Petitioner

Williamsburgh Trade Association *and* International Ladies' Garment Workers' Union, AFL–CIO, Petitioner. Cases 29–RC–6754, 29–RC–6760, 29–RC–6762, 29–RC–6781, 29–RC–6782, 29–RC–6783, 29–RC–6784, 29–RC–6799, 29–RC–7168, 29–RC–7172, 29–RC–7173, 29–RC–7481, 29–RC–7556, and 29–RC–7557

February 19, 1993

DECISION, ORDER, AND DIRECTION OF ELECTIONS

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon petitions duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before Hearing Officers Rhonda Schectman, Luis A. St. Bernard, and Arthur Eisenberg on various dates between April 8, 1987, and January 3, 1991. Following the hearing and pursuant to Section 102.67(h) of the National Labor Relations Board's Rules and Regulations, this proceeding was transferred to the Board for decision. Thereafter, briefs were filed by the Petitioner ILGWU,[1] the Williamsburgh Trade Association (WTA), and various Employers.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the hearing officers' rulings and finds that they are free from prejudicial error. The rulings are affirmed.

On the entire record in this case, the Board finds

I. THE BOARD'S JURISDICTION

The Williamsburgh Trade Association is a multiemployer group composed of garment and textile manufacturers, and other manufacturing and nonmanufacturing enterprises, located in New York and New Jersey. During the 12-month period preceding the commencement of the hearing in this case, a representative period, the Williamsburgh Trade Association had member-employers that purchased and received supplies valued in excess of $50,000 directly from points outside the State in which the member-employer was located. At some point during the pendency of this proceeding, all of the individual employers listed in the caption above were members of the Williamsburgh Trade Association, with the exception of the three employers listed below.

A.G.F. Sports, Ltd. is a sewing contractor in the ladies' apparel industry. During the 12-month period preceding the commencement of the hearing in this case, a representative period, A.G.F. Sports, Ltd. performed services valued in excess of $50,000 for employers meeting the Board's jurisdictional standards.

Liberty House Trading Corporation is a cutting contractor in the women's apparel industry. During the 12-month period preceding the commencement of the hearing in this case, a representative period, Liberty House Trading Corporation performed services valued in excess of $50,000 for employers meeting the Board's jurisdictional standards.[2]

On the basis of the facts set forth above, we find that the Williamsburgh Trade Association, A.G.F. Sports, Ltd., and Liberty House Trading Corporation

[1] The International Ladies' Garment Workers' Union and its locals are represented jointly in this proceeding and all references to the Petitioner ILGWU refer collectively to the international and the locals.

[2] Inasmuch as the record contains no commerce information pertaining to Maramount Corp., we shall remand the *Maramount* petition, Case 29–RC–6754, to the Regional Director for the limited purpose of reopening the record to receive such evidence concerning the Board's jurisdiction. Thereafter, the Regional Director shall take further appropriate action consistent with this decision.

are engaged in commerce within the meaning of the National Labor Relations Act and that it will effectuate the policies of the Act to assert jurisdiction.

II. THE LABOR ORGANIZATIONS

The parties stipulated, and we find, that the Petitioner International Ladies' Garment Workers' Union and its locals, Petitioner Local 810, International Brotherhood of Teamsters,[3] Intervenor United Production Workers Union Local 17–18,[4] and Intervenor Local 723, International Brotherhood of Teamsters[5] are labor organizations within the meaning of Section 2(5) of the Act. The labor organizations involved claim to represent certain employees of the Employers.

III. QUESTION CONCERNING REPRESENTATION

A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

IV. THE APPROPRIATE BARGAINING UNITS

A. *Factual Background*

In 1974, six employers located in the Williamsburgh section of Brooklyn, all of whose employees were represented for purposes of collective bargaining by the United Production Workers Union Local 17–18 (Local 17–18), joined together and formed the Williamsburgh Trade Association (WTA) in order, inter alia, to negotiate and bargain with Local 17–18. The original WTA members were primarily observant Orthodox Jews who believed that their special concerns regarding hours of work, holidays, and other terms and conditions of employment could best be addressed through multiemployer bargaining with Local 17–18. They also believed that joining together for multiemployer negotiations would enable them to save legal fees and expenses, gain clout with Local 17–18, and enhance labor stability by preventing raids from other unions.

In March 1975, the WTA and Local 17–18 signed the first in what would become a series of successive 3-year collective-bargaining agreements covering the employees of the WTA members. From its inception with only six employers, the WTA grew quickly and, as of July 1989, the WTA had approximately 148 member-employers. Those employers were largely engaged in the varied aspects of the garment and textile industries,[6] but member-employers were also involved in automobile parts manufacturing, spice preparation and distribution, wine making, furniture, printing, jewelry, meat packing, plastic goods manufacturing, book binding, chocolate manufacturing, plumbing supply, frozen food processing, paper goods, lumber yard, picture frame manufacturing, and light fixture manufacturing businesses.

During the pendency of this proceeding, the Petitioner ILGWU filed numerous petitions seeking representation of the production and maintenance employees of many of the WTA members, as well as several nonmember employers,[7] on an individual employer unit basis.[8] From December 1989 until the expiration of the March 19, 1987–March 18, 1990 collective-bargaining agreement, many members withdrew from the WTA, resulting in a membership of approximately 92 employers. Subsequently, upon the expiration of the 1987–1990 collective-bargaining agreement between WTA and Local 17–18, the Petitioner ILGWU filed, as an alternative to the individual employer petitions, a petition for representation of the production and maintenance employees in the overall WTA bargaining unit and a petition for representation of the Greater New York Metropolitan Employers Association[9] production and maintenance employees.

B. *The Parties' Contentions*

The WTA contends that the individual employer petitions must be dismissed because an overall WTA unit is the only appropriate bargaining unit in view of the long history of multiemployer collective bargaining between the WTA and Local 17–18. The WTA members' employees are all represented by the same union, Local 17–18, and are covered by the same welfare

[3] Teamsters Local 810 has only petitioned for representation of the employees of Nova Clutch; all other petitions in this proceeding have been filed by the ILGWU.

[4] Local 17–18 has intervened in all of the cases involved in this proceeding.

[5] Teamsters Local 723 is the Intervenor in *Gel Spice Company*, Case 29–RC–6783, only. At the hearing, Petitioner ILGWU and Intervenor Local 17–18 expressed no position concerning Local 723's labor organization status based on their lack of knowledge about Local 723.

[6] Included among the garment industry and textile industry employers were those operating warehouses and sweater mills, sewing contractors and cutting contractors, importers, retail sales enterprises, sportswear manufacturers, cloth filter bag manufacturers, lingerie manufacturers, and stuffed toy manufacturers. The group included jobbers, as well as contractors and manufacturers.

[7] The nonmember employers are A.G.F. Sports, Ltd., Liberty House Trading Corporation, and Maramount Corp. These employers have entered into individual collective-bargaining agreements with Local 17–18.

[8] In addition to the petitions consolidated in the instant proceeding, the Petitioner ILGWU contemporaneously filed petitions for representation of many more WTA members' employees on an individual employer unit basis. Some of those petitions may still be pending in the Region, awaiting this decision.

[9] On December 13, 1989, 18 members of the WTA withdrew from that association and formed a new multiemployer bargaining association, the Greater New York Metropolitan Employers Association (Metro). On December 18, 1989, Metro signed a recognition agreement with Local 17–18 agreeing to continue in full force and effect the existing WTA collective-bargaining agreement until its expiration on March 18, 1990. Thereafter, in May 1990, Metro and Local 17–18 reached agreement on a new 3-year contract covering the Metro employers' production and maintenance employees.

fund. The WTA further contends that by filing the overall WTA and Metro petitions, the ILGWU has conceded that the existing multiemployer, multi-industry unit is appropriate.

The WTA emphasizes that the multiemployer unit is overwhelmingly composed of garment/textile industry employers whose small shops located within the same geographic area have the same conditions of employment. The WTA argues that, although they produce different products, its members' employees share similar skill levels, types of work, and employment conditions.

The WTA argues that its multiemployer, multi-industry association is similar to other successful multiemployer, multi-industry bargaining relationships, such as the Industrial Employers and Distributors Association (IEDA) in the San Francisco area, and the Plastic and Metal Novelty Manufacturers Association in the New York City area.

The WTA also contends that the overall WTA petition must be dismissed or modified because it deviates from the contractual wall-to-wall multiemployer unit by seeking representation of only production and maintenance employees. The WTA asserts that employees will have an opportunity to exercise their Section 7 rights if an election is held in the overall unit. Finally, the WTA argues that specific employers[10] remain members of the WTA because they failed to withdraw from the WTA in a timely and lawful manner.

The Petitioner ILGWU contends that the bargaining history between the WTA and Local 17–18 does not compel the Board to find the multiemployer, multi-industry unit appropriate. ILGWU argues that such multiemployer, multi-industry units are not appropriate because the employees' Section 7 rights are hindered without affording them the advantages inherent in single-industry, multiemployer units. The ILGWU asserts that the legislative history of the Act shows that Congress intended multiemployer bargaining to be limited to single-industry groups, and that, likewise, the Supreme Court's approval of multiemployer bargaining through the years has been single industry only.

ILGWU contends that multi-industry bargaining necessarily results in lowest common denominator contracts lacking clauses that are specific to any one industry. ILGWU points out that the IEDA agreement, relied on by the WTA, demonstrates the difficulties of multi-industry bargaining: almost half of the IEDA members have separate agreements with the unions to address industry-specific concerns. ILGWU asserts that the union attempted to split the Plastic and Metal Novelty Manufacturers into a plastics group and a metals group. Further, ILGWU emphasizes that the Plastic and Metal Novelty contract does not contain provisions establishing job classifications or minimum rates.

ILGWU contends that the garment industry is particularly inappropriate for mixed-industry multiemployer bargaining, and notes that neither the IEDA nor the Plastic and Metal Novelty group include any garment industry employers.

The ILGWU argues in the alternative that if an election is directed in the overall WTA unit, that the office clericals must be excluded. Finally, the ILGWU argues that, in any event, elections must be held at the nonmember employers, A.G.F. Sports, Liberty House Trading Corporation, and Maramount, because those petitions were pending during the relevant window periods.

Nonmember Employers A.G.F. Sports, Liberty House Trading Corporation, and Maramount Corp. argue that the individual petitions filed for representation of their employees are subject to contract bars.

Individual Employers Aggregate Sales/Cool Wear, Damas Atlantic, Ltd., Three Scissors, Ltd., Elegant Knitted Headwear Co., Inc., Bedford Cutting Mills, Three Sisters Apparel, Inc., and Three Sisters Sportswear, Inc. contend that they have withdrawn or been expelled from membership in the WTA, and are no longer bound by the WTA/Local 17–18 collective-bargaining relationship.

C. *Discussion and Conclusions*

1. The unit scope issue

Section 9(b) of the Act provides that ''[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof.'' In *Shipowners' Assn. of the Pacific Coast*, 7 NLRB 1002 (1938), review denied sub nom. *AFL v. NLRB*, 103 F.2d 933 (D.C. Cir. 1939), affd. 308 U.S. 401 (1940), the Board, with Supreme Court approval, recognized the appropriateness of a multiemployer bargaining unit. Determining whether a unit is appropriate for bargaining requires the Board to balance the competing interests of ''insuring to employees their rights to self-organization and freedom of choice in collective bargaining and of fostering industrial peace and stability through collective bargaining.'' *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

The cornerstone of the Board's policies on appropriateness of bargaining units is the community-of-interest doctrine, which operates ''to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment.''

[10] Aggregate Sales/Cool Wear; Amerex Textile Co.; Bellroth Knit Sportswear Corp.; Damas Atlantic, Ltd.; Three Scissors, Ltd.; Elegant Knitted Headwear, Inc.; Euromoda, Ltd.; J.G. Betterbottom, Inc.; Linen Star, Inc.; The Skirt Rack, Inc.; Starbright Sportswear, Inc.; Techknits, Inc.; Worldwide Distribution Service, Inc.; Bedford Cutting Mills, Inc.; Three Sisters Sportswear, Inc.; and Three Sisters Apparel, Inc.

15 NLRB Ann. Rep. 39 (1950). ''Such a mutuality of interest serves to assure the coherence among employees necessary for efficient collective bargaining and at the same time to prevent a functionally distinct minority group from being submerged in an overly large unit.'' *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 172–173 (1971).

The instant case presents us with the task of balancing employees' Section 7 rights of self-organization and freedom of choice against the interest of stability in labor relations, by requiring us to decide whether to give controlling weight to the long history of collective bargaining between the WTA and Local 17–18 in the face of the individual employer unit petitions.[11] For the reasons set forth below, we find that the balance should be struck in favor of the employees' Section 7 rights.[12]

The filing of numerous individual petitions in the instant proceeding evidences that employees are seeking to exercise their fundamental Section 7 rights to self-organization and freedom of choice in collective bargaining. These petitions request elections on an employer-by-employer basis, and Section 9(b) of the Act, quoted above, specifically recognizes that an ''employer'' unit is appropriate for the purposes of collective bargaining. Such a unit is clearly appropriate because there is likely to be a strong community of interest among the persons employed by the same employer in connection with the same enterprise at the same location.

By contrast, apart from the fact that they have a common bargaining representative, the employees in the existing WTA unit appear to enjoy no special community of interest. In reaching this conclusion, we rely in particular on the following factors.

First, there is a wide diversity of businesses among the employer-members of the WTA. As noted above, the WTA membership has included employers involved in businesses ranging from garment and textile manufacturing to food processing, and from lumber yards to automobile parts, to name just a few.

Second, the WTA unit is somewhat geographically diverse. The various members' shops are scattered beyond the New York City boroughs to suburban counties in New York and New Jersey.

Third, there is no evidence of contact among the employees of the various WTA employers, of employee interchange or transfers, of integration of work functions, or of common supervision. The only point of intersection in their terms and conditions of employment has developed from the fact that their employers joined the WTA.

Finally, and most significantly, notwithstanding the fact that WTA employers operate in differing industries, the WTA/Local 17–18 contracts over the years have failed to reflect any particular industry-specific concerns. Further, there have been no riders or supplemental agreements between Local 17–18 and any of the employer-members to address these concerns on a shop-by-shop basis. We find these circumstances to be particularly troubling in light of the testimony of the parties' expert witnesses that industry-specific factors play a crucial role in determining wages, as well as job classifications, promotions, health and safety, and other contract provisions. Our own experience, based on our review of numerous collective-bargaining agreements, is entirely consistent with this expert testimony. The absence of such industry-specific contractual terms[13] strongly suggests to us that, if bargaining on the basis of the existing WTA unit has advanced the statutory interest in stable labor relations, it has done so at the expense of employee interests. *Burns Security Service*, 257 NLRB 387, 388 (1981).[14]

Considering all these factors and noting that the Act expressly dictates that employee freedom of choice must be considered in any unit determination, we find that the WTA has not presented adequate justification for deeming the historical pattern of bargaining to be a bar to the instant petitions. In contrast to the single-employer units petitioned for, the existing WTA unit is a heterogeneous aggregation of distinct groups of employees with widely differing interests and concerns.

Our reasoning applies with even greater force with respect to the newly-formed Metro unit, which consists of 18 employers that had withdrawn from the WTA.

[11] In other situations, the Board has found bargaining history not to be determinative of unit appropriateness. See, e.g., *Burns International Security Service*, 257 NLRB 387, 388 (1981).

[12] Unit determinations, by their nature, are highly fact specific. See *NLRB v. WKRG-TV*, 470 F.2d 1302, 1311 (5th Cir. 1973) (''determination of a unit's appropriateness will invariably involve factual situations peculiar to the employer and unit at issue''). In reaching our conclusion, we rely on the particular circumstances of this case. We express no view on the appropriateness of multiemployer, multi-industry bargaining units, or on whether the garment industry is inappropriate for mixed-industry, multiemployer units.

[13] For example, the minimum starting wage rate for employees covered by the 1984–1987 and 1987–1990 WTA/Local 17–18 collective-bargaining agreements was the prevailing Federal or New York State minimum wage rate, whichever is higher. Annual hourly wage increases for covered employees averaged $0.15. WTA's executive director testified that he did not know whether employees of the various WTA employers working as sewing machine operators, pressers, cutters, or shipper/receivers received any wage rate other than the uniform minimum wage rate.

[14] With these facts in mind, Member Oviatt observes that while it is possible in multiemployer, multi-industry bargaining that the employees in some lower paying industries might benefit by having a contract that also covered employees in certain higher paying industries, e.g., if the multi-industry contract contained economic terms reflecting the ''pull'' of the higher paying industries, that is not the case here. Thus, it would appear that bargaining in this multiemployer, multi-industry unit has not inured to the benefit of the diverse groups of employees. *Burns*, supra, 257 NLRB 388.

See footnote 9, supra. This unit suffers from all of the infirmities of the WTA unit and is not even supported by the factor of bargaining history.[15] Accordingly, we find that the multiemployer, multi-industry Metro unit does not warrant the dismissal of individual employer unit petitions.[16]

2. The contract-bar issue

Regarding the *A.G.F.*, *Liberty House*, and *Maramount* petitions, we agree with the Petitioner ILGWU that even though those petitions may have been premature as originally filed, based on then-existing independent collective-bargaining agreements with Local 17–18, the petitions remained pending in this proceeding during the relevant window periods for each of the independent contracts. Therefore, we find no contract bar to the petitions. See *Royal Crown Cola Bottling Co.*, 150 NLRB 1624 (1965).

3. The unit composition issue

The Petitioners have petitioned for representation of the production and maintenance employees of each employer.[17] A production and maintenance unit is a classic appropriate unit, and the record contains no evidence that any of the petitioned-for production and maintenance units is not appropriate.[18] Accordingly, we shall direct that elections be held in the petitioned-for individual employer units.

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[15] Member Oviatt finds that the garment industry is especially inappropriate for mixed-industry, multiemployer units because Congress has prescribed special statutory provisions to address unique problems in this industry. The garment industry proviso to Sec. 8(e) of the Act creates an absolute statutory exemption from the proscriptions of Secs. 8(e) and 8(b)(4)(B) for agreements involving employers working on the goods or premises of a jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry. Because of the integrated production process used by garment industry employers, Congress enacted the second proviso to Sec. 8(e) to protect garment industry agreements that prevent jobbers or manufacturers from subcontracting part of the manufacturing process to sweatshops where disadvantaged employees worked for substandard wages and working conditions. The Board has recognized that Congress ''specifically authorized garment industry union to engage in otherwise prohibited conduct for the purpose of forcing jobbers to execute agreements requiring them to use only union contractors.'' *Joint Board of Coat, Suit & Allied Garment Workers*, 212 NLRB 735, 738 (1974).

The multiemployer, multi-industry units at issue in this proceeding include both garment and nongarment industry employers, thereby precluding garment industry employees from availing themselves of these special protections under the Act. For these reasons, Member Oviatt finds such units to be particularly inappropriate in this case. He also notes the absence of meaningful legislative history on multi-industry units generally.

[16] Inasmuch as the Petitioner has maintained the position that it filed the overall petitions for the WTA and Metro units only as a fallback in the event that the individual employer petitions were dismissed, we shall dismiss the petitions for overall units in Cases 29–RC–7556 and 29–RC–7557.

In these two petitions, the Petitioner ILGWU sought to represent a unit of production and maintenance employees rather than the wall-to-wall unit encompassed by the recently expired contract between the WTA and Local 17–18. In view of our decision in this case, we find it unnecessary to decide whether the petitioned-for overall production and maintenance unit is appropriate.

Further, we find it unnecessary to pass on the WTA membership status of the various Employers claiming to have withdrawn or to have been expelled from the WTA.

[17] The petitioned-for units are as follows:

Maramount, 29–RC–6754
Included: All production and maintenance, shipping and receiving, sanitation employees and trucking employees.
Excluded: All office clerical employees, guards and supervisors as defined in the Act.

B.J. Paper, 29–RC–6760
Included: All production and maintenance employees employed by the employer at his 544 Park Avenue, Brooklyn, NY location.
Excluded: All office clericals, supervisors, salespeople, technical people and guards as defined in the Act.

Durlacher, 29–RC–6762
Included: All production and maintenance employees employed by the employer at his 47–11 Van Dam Street, Long Island City, NY location.
Excluded: All office clericals, supervisors, salespeople, technical people and guards as defined in the Act.

Liberty House Trading, 29–RC–6781
Included: All production and maintenance, shipping and receiving, sanitation employees.
Excluded: All office clerical employees, guards and supervisors as defined in the Act.

A.G.F. Sports, 29–RC–6782
Included: All production and maintenance, shipping and receiving, sanitation employees.
Excluded: All office clerical employees, guards and supervisors as defined in the Act.

Gel Spice, 29–RC–6783
Included: Shipping, receiving, grinding, packing employees and all other production and maintenance employees.
Excluded: All office clerical employees, professional employees, truck drivers, mechanics, guards and supervisors as defined by the Act.

Lynch Novelty, 29–RC–6784
Included: Production and maintenance workers.

Nova Clutch, 29–RC–6799 and 29–RC–7481
Included: All production, maintenance and shipping employees.
Excluded: Supervisors, office clericals and guards.

Marlin Steel Products, 29–RC–7168
Included: All production, maintenance, shipping and receiving employees employed by the Employer.
Excluded: All office clerical employees, guards and supervisors as defined in the Act.

Three Sisters Apparel, 29–RC–7172
Included: All production and maintenance workers including machine operators, floor workers, shipping and receiving workers.
Excluded: Clerical employees, guards and supervisors.

Bedford Cutting Mills, 29–RC–7173
Included: All production and maintenance workers including cutters, table helpers, floor workers, shipping and receiving workers.
Excluded: Clerical employees, guards and supervisors.

[18] At various times during the hearing, the hearing officer reminded the parties that the hearing was supposed to provide them the opportunity to make a comprehensive record on all the relevant issues in the case, including eligibility issues. On February 15, 1990, the Regional Director so advised the parties in writing.

ORDER

It is ordered that the petitions in Cases 29–RC–7556 and 29–RC–7557 are dismissed.

IT IS FURTHER ORDERED that Case 29–RC–6754 is remanded to the Regional Director for the purpose of taking further action in accord with this decision.

[Direction of Elections omitted from publication.]